



General Assembly

**Substitute Bill No. 399**

February Session, 2010

\* SB00399LAB\_\_042210\_\_ \*

**AN ACT ESTABLISHING A CIVIL ACTION WITH RESPECT TO  
CRIMINAL RECORDS USED IN EMPLOYMENT DECISIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-51i of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 (a) For the purposes of this section, "employer" means any person  
4 engaged in business who has one or more employees, including the  
5 state or any political subdivision of the state.

6 (b) No employer or an employer's agent, representative or designee  
7 may require an employee or prospective employee to disclose the  
8 existence of any arrest, criminal charge or conviction, the records of  
9 which have been erased pursuant to section 46b-146, 54-76o or 54-142a.

10 (c) An employment application form that contains any question  
11 concerning the criminal history of the applicant shall contain a notice,  
12 in clear and conspicuous language: (1) That the applicant is not  
13 required to disclose the existence of any arrest, criminal charge or  
14 conviction, the records of which have been erased pursuant to section  
15 46b-146, 54-76o or 54-142a, (2) that criminal records subject to erasure  
16 pursuant to section 46b-146, 54-76o or 54-142a are records pertaining to  
17 a finding of delinquency or that a child was a member of a family with  
18 service needs, an adjudication as a youthful offender, a criminal charge

19 that has been dismissed or nulled, a criminal charge for which the  
20 person has been found not guilty or a conviction for which the person  
21 received an absolute pardon, and (3) that any person whose criminal  
22 records have been erased pursuant to section 46b-146, 54-76o or 54-  
23 142a shall be deemed to have never been arrested within the meaning  
24 of the general statutes with respect to the proceedings so erased and  
25 may so swear under oath.

26 (d) No employer or an employer's agent, representative or designee  
27 shall deny employment to a prospective employee solely on the basis  
28 that the prospective employee had a prior arrest, criminal charge or  
29 conviction, the records of which have been erased pursuant to section  
30 46b-146, 54-76o or 54-142a or that the prospective employee had a prior  
31 conviction for which the prospective employee has received a  
32 provisional pardon pursuant to section 54-130a.

33 (e) No employer or an employer's agent, representative or designee  
34 shall discharge, or cause to be discharged, or in any manner  
35 discriminate against, any employee solely on the basis that the  
36 employee had, prior to being employed by such employer, an arrest,  
37 criminal charge or conviction, the records of which have been erased  
38 pursuant to section 46b-146, 54-76o or 54-142a or that the employee  
39 had, prior to being employed by such employer, a prior conviction for  
40 which the employee has received a provisional pardon pursuant to  
41 section 54-130a.

42 (f) The portion of an employment application form which contains  
43 information concerning the criminal history record of an applicant or  
44 employee shall only be available to the members of the personnel  
45 department of the company, firm or corporation or, if the company,  
46 firm or corporation does not have a personnel department, the person  
47 in charge of employment, and to any employee or member of the  
48 company, firm or corporation, or an agent of such employee or  
49 member, involved in the interviewing of the applicant.

50 (g) Notwithstanding the provisions of subsection (f) of this section,

51 the portion of an employment application form which contains  
52 information concerning the criminal history record of an applicant or  
53 employee may be made available as necessary to persons other than  
54 those specified in said subsection (f) by:

55 (1) A broker-dealer or investment adviser registered under chapter  
56 672a in connection with (A) the possible or actual filing of, or the  
57 collection or retention of information contained in, a form U-4 Uniform  
58 Application for Securities Industry Registration or Transfer, (B) the  
59 compliance responsibilities of such broker-dealer or investment  
60 adviser under state or federal law, or (C) the applicable rules of self-  
61 regulatory organizations promulgated in accordance with federal law;

62 (2) An insured depository institution in connection with (A) the  
63 management of risks related to safety and soundness, security or  
64 privacy of such institution, (B) any waiver that may possibly or  
65 actually be sought by such institution pursuant to section 19 of the  
66 Federal Deposit Insurance Act, 12 USC 1829(a), (C) the possible or  
67 actual obtaining by such institution of any security or fidelity bond, or  
68 (D) the compliance responsibilities of such institution under state or  
69 federal law; and

70 (3) An insurance producer licensed under chapter 701a in  
71 connection with (A) the management of risks related to security or  
72 privacy of such insurance producer, or (B) the compliance  
73 responsibilities of such insurance producer under state or federal law.

74 (h) (1) For the purposes of this subsection: (A) "Consumer reporting  
75 agency" means any person who regularly engages, in whole or in part,  
76 in the practice of assembling or preparing consumer reports for a fee,  
77 which reports compile and report items of information on consumers  
78 that are matters of public record and are likely to have an adverse  
79 effect on a consumer's ability to obtain employment, but does not  
80 include any public agency; (B) "consumer report" means any written,  
81 oral or other communication of information bearing on an individual's  
82 credit worthiness, credit standing, credit capacity, character, general

83 reputation, personal characteristics or mode of living; and (C)  
84 "criminal matters of public record" means information obtained from  
85 the Judicial Department relating to arrests, indictments, convictions,  
86 outstanding judgments, and any other conviction information, as  
87 defined in section 54-142g.

88 (2) Each consumer reporting agency that issues a consumer report  
89 that is used or is expected to be used for employment purposes and  
90 that includes in such report criminal matters of public record  
91 concerning the consumer shall:

92 (A) At the time the consumer reporting agency issues such  
93 consumer report to a person other than the consumer who is the  
94 subject of the report, provide the consumer who is the subject of the  
95 consumer report (i) notice that the consumer reporting agency is  
96 reporting criminal matters of public record, and (ii) the name and  
97 address of the person to whom such consumer report is being issued;

98 (B) Maintain procedures designed to ensure that any criminal  
99 matter of public record reported is complete and up-to-date as of the  
100 date the consumer report is issued, which procedures shall, at a  
101 minimum, conform to the requirements set forth in section 54-142e, as  
102 amended by this act.

103 (3) This subsection shall not apply in the case of an agency or  
104 department of the United States government seeking to obtain and use  
105 a consumer report for employment purposes if the head of the agency  
106 or department makes a written finding pursuant to 15 USC  
107 1681b(b)(4)(A).

108 (i) Any employer, employer's agent, representative or designee, or  
109 any consumer reporting agency, that knowingly violates any provision  
110 of this section or knowingly aids in the violation of any provision of  
111 this section shall be liable in a civil action to the person aggrieved by  
112 such violation for damages, together with costs and a reasonable  
113 attorney's fee.

114 Sec. 2. Section 54-142e of the general statutes is repealed and the  
 115 following is substituted in lieu thereof (*Effective October 1, 2010*):

116 (a) Notwithstanding the provisions of subsection (e) of section 54-  
 117 142a and section 54-142c, with respect to any person, including, but not  
 118 limited to, a consumer reporting agency as defined in subsection (h) of  
 119 section 31-51i, as amended by this act, who purchases criminal matters  
 120 of public record, as defined in said subsection (h), from the Judicial  
 121 Department, the department shall make available to such person  
 122 information concerning such criminal matters of public record that  
 123 have been erased pursuant to section 54-142a. Such information may  
 124 include docket numbers or other information that permits the person  
 125 to identify and permanently delete records that have been erased  
 126 pursuant to section 54-142a.

127 (b) Each person, including, but not limited to, a consumer reporting  
 128 agency, that has purchased records of criminal matters of public record  
 129 from the Judicial Department shall, prior to disclosing such records, (1)  
 130 purchase from the Judicial Department, on a monthly basis or on such  
 131 other schedule as the Judicial Department may establish, any updated  
 132 criminal matters of public record or information available for the  
 133 purpose of complying with this section, and (2) update its records of  
 134 criminal matters of public record to permanently delete such erased  
 135 records. Such person shall not further disclose such erased records.  
 136 Any person, including, but not limited to, a consumer reporting  
 137 agency, that knowingly violates any provision of this subsection or  
 138 knowingly aids in the violation of any provision of this subsection  
 139 shall be liable in a civil action to the person aggrieved by such  
 140 violation for damages, together with costs and a reasonable attorney's  
 141 fee.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2010</i>	31-51i
Sec. 2	<i>October 1, 2010</i>	54-142e

**JUD**      *Joint Favorable Subst.*

**LAB**      *Joint Favorable*